IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.558 OF 2006

IN

NOTICE OF MOTION NO.2850 OF 2006

IN

L.C.SUIT NO.2883 OF 2006

WITH

CIVIL APPLICATION NO.721 OF 2006

M/s.Asian Marble Industries ...Appellant

Versus

M/s.Shree Balaji Developers & Anr. ...Respondents

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Mr.Arif Bookwala with Mr.Sachin Satpute i/b
Rajesh S.Sharma & Associates for Appellant.
Mr.Y.K.Tiwari with Mr.B.H.Bhalwal for Respondent No.1.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 1, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant documents on record.

2. Admit. Mr.Tiwari waives notice for Respondent No.1, who is the contesting Respondent. It is agreed that other Respondents are formal Respondents for the purpose of present Appeal.

3. As short question is involved, Appeal is taken up for final disposal forthwith, by consent.

4. This Appeal from Order takes exception to the Judgment and Order passed by the City Civil Court at Mumbai dated July 20, 2006 in Notice of Motion No.Nil of 2006 in S.C.Suit No.2883 of 2006. The Court below has passed the following operative order in the said Notice of Motion, which reads thus:

"ORDER

1. Notice of Motion is made returnable forthwith.

2. Issue Ad-interim injunction against The defendant no 1, presenting him from creating third party right, in respect of suit property, and/or not to sell it, till the next date.

3. Parties to appear before the coordinator ADR on or before 1st August

2006.

4. Plaintiff to get it registered.

Adjourned to 1st August 2006 for ADR."

5. It is not necessary to advert to the factual matrix of the case in extenso, for the nature of order that I propose to pass. As the Appeal is directed against the order granting ad-interim relief in favour of the Plaintiff, in my opinion, it is justly contended before this Court that matters which were relevant for the decision for grant of ad-interim relief raised at the instance of the Appellants/Defendant, have not been adverted to, in the impugned Judgment. The question raised, for consideration before this Court is that the Suit as filed, cannot proceed for the nature of relief claimed in respect of Development Agreement. It is well settled, contends Counsel for the Appellant, that the substantive relief which is claimed in the Plaint, in effect, is for relief for specific performance, cannot be granted in respect of Development Agreement. It is then asserted by Counsel for the

Appellant that the Court below has not considered the documents on record which clearly indicates that the right of the Plaintiff was limited to 18 units. There are other contentions raised before this Court.

6. Suffice it to observe that the Trial Court although has passed reasoned order running into three pages, does not deal with the relevant aspects which are canvassed before this Court on behalf of the Appellant. Indeed, Counsel for the Respondent No.1 would contend that the points which are now agitated in this Appeal are being raised for the first time before this Court.

7. In any case, in my opinion, the appropriate course is to relegate the parties before the Trial Court for reconsideration of ad-interim relief afresh on its own merits in accordance with law. The Trial Court shall advert to all the relevant contentions of the parties and the documents pressed into service to record finding on the issue of prima facie case and the justness of granting ad-interim relief in the fact

situation of the case.

8. Accordingly, the impugned order is set-aside. While doing so, it is made clear that the Appellant shall not create any third party right in the suit property till the Trial Court considers the issue of ad-interim relief afresh. The Trial Court shall consider the relief of ad-interim relief expeditiously and decide the same not later than 15 days from the receipt of writ of this Court.

9. Parties to appear before the Trial Court on 8th August 2006 when the Trial Court will examine the issue of grant of ad-interim relief on that date or give suitable date as may be advised to ensure that such prayer is considered within 15 days from the receipt of writ of this Court.

10. Needless to observe that the Trial Court shall decide the issue relating to grant of ad-interim relief on its own merits in accordance with law.

11. Appeal and the accompanying Civil Application stand disposed of on the above terms.

A.M.KHANWILKAR, J.